

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID L. GIST, SR.,

Plaintiff,

-v.-

5:09-CV-01361
(NPM/GHL)

UNITED STATES, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

DAVID L. GIST, SR.
Plaintiff, *pro se*

Neal P. McCurn, Senior District Judge

ORDER ADOPTING REPORT AND RECOMMENDATION

Presently before the court is the Report and Recommendation of Honorable George H. Lowe, USMJ, dated June 2, 2010, see Dkt. No. 17 (“the Report”), recommending that plaintiff be permitted to file a second amended complaint within thirty days of any order adopting the Report, that should plaintiff fail to timely file a second amended complaint, the Clerk of the Court shall enter judgment dismissing this action without further order of this court, and that upon the filing of any second amended complaint, the file be returned to Magistrate Judge Lowe for further review.

When objections to the report and recommendation of a magistrate judge are lodged, the court makes a “de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). After such a review, the court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id.

Having conducted a de novo review of the record, and having considered the issues raised in the plaintiff's objections, the court accepts and adopts the report and recommendation for the reasons stated therein.

Therefore, it is ORDERED that plaintiff may file a “second amended complaint” **within thirty (30) days** of this Order; and it is further

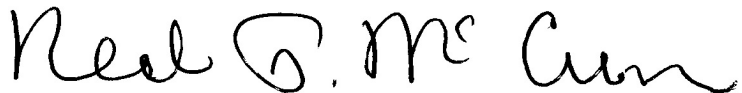
ORDERED that if plaintiff fails to timely file a “second amended complaint,” the Clerk of the Court shall enter judgment dismissing this action without further order of this court due to plaintiff's failure to comply with the terms of this Order; and it is further

ORDERED that upon the filing of any “second amended complaint,” the file in this matter shall be returned to Magistrate Judge Lowe for further review.

The Clerk of the Court shall serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

DATED: June 15, 2010
Syracuse, New York

A handwritten signature in black ink, reading "Neal P. McCurn". The signature is written in a cursive, flowing style. The first name "Neal" is written in a larger, more prominent script, followed by "P." and "McCurn".

Neal P. McCurn
Senior U.S. District Judge